

PATENT APPLICATION  
Docket No. 2553.2.3

***DECLARATION OF JAMES D. BRASHER  
UNDER RULE 132***

1. I, James D. Brasher, hereby declare that I am a self-employed general contractor having a residence at 425 Dusty Road, Reno Nevada, and a mailing address of Post Office Box 11118, Reno, Nevada 89439, and am a co-inventor of the claimed subject matter of U.S. Patent Application Serial No. 10/725,991 (the '991 application), filed December 2, 2003 and entitled AGED ROOFING TILE SYSTEM.

2. I was a building contractor in California for 25 years, have now been building in Nevada for about another decade since, and have observed and studied building and various architectures throughout my life. I am aware of building techniques, materials, and technologies used over the past several hundred years, including the twentieth century and subsequently.

3. I am familiar with claims 1-14 and 17-62 of the '991 application, directed to new methods for making roofing tile.

4. I gathered photographs of European roofs showing aged, weathered, mossy tiles, some of them hundreds of years old, from across France, Germany, and England.

5. I contacted different European companies to see if they had anything available or could manufacture tile that had the aged, weathered, mossy, lichen appearance.

6. The only tiles available directly from a factory were tiles with multiple colors of clay or concrete mixed to vary the color scheme of the base tile; otherwise the only available solution was actual, recycled, aged tile. The tile industry actually recycles old tiles from ancient roofs, some as old as 700 years, but no one can "manufacture" such tile, nor is it available at a reasonable cost. Rather, it is a specialty item, each roof being unique, and the cost of labor, packing, shipping, and reinstallation being prohibitively expensive to obtain such European tiles in the United states from suppliers recycling it.

7. I have learned that an art-recognized, long-felt, persistent, and unmet need for the manufacture of economical roofing materials having an aged appearance, texture, coloring, and so forth such as lichen colonies and moss provide, but remains unmet by the inadequate substitute of mixed-color tiles (lacking the proper color scheme variations, texture, shadowing, and the like) or recycled tile (lacking ready commercial availability, realistic cost as a building material, etc.). Thus the known previous methods of attempting to satisfy the need were inadequate.

8. It is my opinion that the need for tiles made in accordance with claims 1-14 and 17-62 of the invention has existed for about 100 years. For example, the popularity of the architecture typical of small European cottages or country homes began to grow rapidly at the turn of the 19<sup>th</sup> century into the 20<sup>th</sup> century throughout the United States. At that time builders began to go back from modern roofing products to wood shakes and shingles, or European tile if they could get it, to obtain the primitive and aged look of old European country houses. Even then, the moss and lichen growth typical of truly aged roofs could not be duplicated except by use of recycled tiles from aged roofs; moreover, such roofs are climate dependent, and not available everywhere.

9. Using my collection of pictures, the other inventors (the Evans brothers) and I began to figure out a system by evaluating the processes of the production shop, old tiles previously manufactured, studying years of accumulated rejected tiles showing various colors, errors, flaws, history, and treatments whether intentional or accidentally occurring, and analyzing how each effect came to be, thus developing ideas and proposed processes of claims 1-14 and 17-62 for making tiles having the appearance desired, the color schemes, textures, shadowing, and so forth corresponding to the look of actual, aged tiles. The other co-inventors eventually manufactured and provided to me samples for testing in an actual installation environment.

10. The experimental roof achieved the look desired, weathered extremely well, and still looks substantially identical to the way it looked with the tiles straight from the manufacturing facility, with the color scheme, texture, and natural casting of shadows still in place without cracking, separating, or flaking off, and still extending above the top surface of the base tile to cast shadows just as an accumulation of hundreds of years of lichens and moss did in the photographs used to design the tiles and the process.

11. The tile from no other manufacturer matches the appearance achieved by the process of the invention, even today. In particular, tiles of Schill cited by the examiner appear to be those made under the name Monier as identified in the Schill patent assigned thereto.

12. I am familiar with tile made by Monier, and it does not approach the process nor appearance of the tile achieved by methods in accordance with the invention. Rather the Monier tiles I have seen that appear to be made by the prior art process have a "painted" appearance lacking the color schemes, the shapes of medallions, the distribution of medallions and color, as well as the texture, shadowing, and general appearance of tiles of claims 1-14 and 17-62 of the invention, the only tile that has adequately met the art-recognized, persistent, long-felt, unmet need for a manufactured tile having an aged look at manufacture.

13. Moreover, the commercial success of the tile is shown by the response of passersby of my house and that of my daughter, nearby, both of which houses have tile made in accordance with the invention. We have received numerous visitors passing by who stop, comment on the unique and beautiful roof and inquire where such tile is available, many becoming customers.

14. Typically, people see my roof and stop to say how they love it and to ask what that

stuff is on the roof, or to ask how we get moss to grow on the roof here in Nevada's very dry climate.

15. Within about a mile and a half distance in my country neighborhood there are now five houses on which I have installed roofing tiles made in accordance with claims 1-14 and 17-62 of the invention, demonstrating significant commercial success with such a high concentration of one type of roofing of one manufacturer selected and requested by homeowners.

16. Moreover, other people living greater distances away have viewed our roof installations, stopped, inquired, and eventually ordered such roofs for their own homes based on just seeing the roof, with no advertising involved, many commenting that they want that look and cannot obtain it any other way.


17. In one instance, a bicyclist riding through our mountainous, western Nevada area, which is used as a training area for people from all over the west coast, stopped and looked at the house, went back to his home along the California coast, spoke to his wife about the roof, brought his wife out to Nevada, and called at our door to discuss the roof and its roofing tile made in accordance with the invention.

18. In summary, the commercial response has been extremely successful and the long felt need that could not be properly satisfied before by available substitutes is now being requested by homeowners based on their immediate infatuation with the tile and its appearance as installed, substantially without advertising, and certainly without any advertising campaign responsible for the success.

19. My observation of objective responses from many persons to the tile of claims 1-14 and 17-62 of the '991 application is that the tile enjoys uncommon commercial success and satisfies of an art-recognized, long-felt, previously unsatisfied need.

20. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Signed at VERDI, NEVADA this 30 day of DEC., 2008  
City State Month

  
James D. Brasher